

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 816 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

M/S SOUTH SORN CORPO.(INDIA)

Appearance:

MR ND GOHIL, LD. APP for Petitioner
MR AKSHAY H MEHTA for Respondent No. 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 18/03/98

ORAL JUDGEMENT

1. The two respondents (accused nos. 1 and 4 before the learned Special Judge) faced Summary Case No. E.S.T.P. 41 of 1995 before the learned Special Judge, Vadodara in respect of production 'Falcin 500' with a printed price exceeding the maximum price fixed by the Central Government under the Drugs (Price Control) Order, 1987 (for short 'the Order'). The price that was printed

was Rs.20/- instead of Rs.15.30 paise and thus the price which was printed was excess price by Rs.4.70 paise. Hence, the process which the accused persons received was for violation of para. 2(r), para. 8(1), para. 8 and para. 9 of the Order read with sections 3, 7 and 12AA of the Essential Commodities Act, 1955 (for short 'the Act'). Out of the 4 accused, accused nos. 1 and 4 (respondents herein) pleaded guilty to the charge as accused no. 4 was managing the affairs of accused no.1. Consequently the learned Special Judge by his impugned judgment and order dated 9/7/1997 acquitted the accused nos. 2 and 3 and convicted the accused nos. 1 and 4 upon their plea of guilt and sentenced them to pay fine of Rs.7,000/- each. The fine has been paid up by the said accused persons. However, the State of Gujarat feeling aggrieved with and dissatisfied by the said judgment and order has filed this appeal for enhancement of sentence on the ground that the aforesaid accused persons were liable for minimum sentence as provided u/S. 7 (1) (a) (ii) and that the case cannot be said to have been covered u/S. 7(1) (a) (i) of the Act.

2. I have gone through the relevant provisions of the aforesaid Order as well as section 3 read with section 7 of the Act. I have also gone through the provisions of section 12AA (1) (f). The aforesaid clause (f) provides for conviction in a summary trial by a Special Judge and it has been lawful for the special Court to pass sentence of imprisonment for a term not exceeding two years. It might be noted that upon examination of the relevant clauses of the Order the case appears to be not falling within para. 2 (r), para. 8(1), para. 8 and para. 9. Of-course, there has been debate about para. 10 that might be applied as also the provision regarding exemption to a small scale industries likely to come into play. Bearing in mind all these special facts and circumstances of the present case, I find that this is not a fit case for going into the merits of the proposition regarding whether the respondents are liable for minimum sentence or not.

3. Hence, in the facts of the case, no indulgence can be shown in this appeal for enhancement of sentence. The special facts and circumstances of the present case would obviously include the process which the accused persons faced under the relevant provisions set-out hereinabove coupled with section 12AA of the Act. In that view of the matter, following order is passed :-

This appeal is dismissed.

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PVR cr.a81697j.